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Attorneys for Plaintiff ADRIANA AGUILAR
on behalf of herself and all other current and former aggrieved
California-based hourly non-exempt employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ADRIANA AGUILAR, on behalf of herself and
all other current and former aggrieved
California-based hourly non-exempt employees,

Plaintiff,

vs.

LABORATORY CORPORATION OF
AMERICA; and DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV10203**

PAGA ACTION

**PLAINTIFF ADRIANA AGUILAR'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff ADRIANA AGUILAR ("Plaintiff"), who alleges and complains
against Defendants LABORATORY CORPORATION OF AMERICA and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

1 **I. INTRODUCTION**

2 1. This is a Private Attorneys' General Act of 2004, Labor Code §§ 2698, *et seq.*
3 ("PAGA"), representative action brought by Plaintiff on behalf of the State of California, herself
4 and all other current and former aggrieved employees of Defendants who worked as hourly non-
5 exempt employees in California during the relevant time period seeking civil penalties associated
6 with Defendants' violation of the Labor Code based on Defendants' (1) failure to pay minimum
7 wages, (2) failure to pay overtime wages and/or overtime wages at the proper overtime rate, (3)
8 failure to pay meal period premiums at the proper regular rate, (4) failure to authorize or permit
9 rest periods, failure to pay rest period premiums, and/or failure to pay rest period premiums at the
10 proper regular rate, (5) failure to indemnify for employment-related expenditures, (6) failure to
11 timely pay earned wages during employment, (7) failure to provide accurate wages statements, (8)
12 failure to maintain and produce employees records, (9) failure to pay accrued and vested vacation
13 wages and/or personal time off ("PTO") wages upon termination, and (10) failure to pay final
14 wages upon separation of employment. Plaintiff seeks on a representative basis, following notice
15 to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees
16 pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of
17 California, and all other current and former aggrieved California-based hourly non-exempt
18 employees.

19 **II. JURISDICTION AND VENUE**

20 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
21 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
22 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
23 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
24 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
25 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
26 aggrieved California-based hourly non-exempt employees occurred in locations throughout
27 California, including but not limited to Los Angeles County at 4351 East Imperial Highway,
28 Lynwood, California 90262.

1 **III. PARTIES**

2 1. Plaintiff brings this action as a representative of the Labor and Workforce
3 Development Agency on behalf of herself and all other current and former aggrieved California-
4 based hourly non-exempt employees subject to violations of the Labor Code. The named Plaintiff
5 and the persons on whose behalf this action is filed include current, former and/or future
6 employees of Defendants who work, worked, or will work for Defendants as hourly non-exempt
7 employees in California. At all times mentioned herein, the currently named Plaintiff is and was
8 domiciled and a resident and citizen of California and was employed by Defendants as an hourly
9 non-exempt employee within the one (1) year prior to the filing of the PAGA Claim Notice with
10 the LWDA. More specifically, Plaintiff worked for Defendants as a phlebotomist until on or about
11 September 16, 2021.

12 3. Plaintiff is informed and believes and thereon alleges that Defendant
13 LABORATORY CORPORATION OF AMERICA is authorized to do business within the State of
14 California and is doing business in the State of California and/or that Defendants DOES 1-33 are,
15 and at all times relevant hereto were persons acting on behalf of Defendant LABORATORY
16 CORPORATION OF AMERICA in the establishment of, or ratification of, the aforementioned
17 illegal wage and hour practices or policies. Defendant LABORATORY CORPORATION OF
18 AMERICA operates in Los Angeles County and employed Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees in Los Angeles County, including but
20 not limited to, at 4351 East Imperial Highway, Lynwood, California 90262.

21 2. Plaintiff is informed and believes and thereon alleges that Defendants DOES 34-66
22 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff
23 that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and
24 aggrieved employees to work, and exercised control over the wages, hours and working conditions
25 of employment of Plaintiff and aggrieved employees.

26 3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 67-
27 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually
28 and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor,

1 independent contractor and/or employee of each defendant who violated or caused to be violated
2 the minimum wage and overtime provisions of the Labor Code and/or any provision of the
3 Industrial Welfare Commission's wage orders regulating hours and days of work.

4 4. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
5 sues said Defendants by said fictitious names, and will amend this complaint when the true names
6 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
7 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
8 named Defendants is in some manner responsible for the events and allegations set forth in this
9 complaint.

10 5. Plaintiff makes the allegations in this complaint without any admission that, as to
11 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
12 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

13 **FIRST CAUSE OF ACTION**

14 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

15 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

16 **(Against All Defendants)**

17 6. Plaintiff incorporates all paragraphs above as though fully set forth herein.

18 7. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order
19 ("Wage Order") codified at California Code of Regulations, title 8, Defendants were employers of
20 Plaintiff within the meaning of the applicable Wage Order and Labor Code sections. Therefore,
21 each of the Defendants is jointly and severally liable for the wrongs complained of herein in
22 violation of the Wage Order and Labor Code.

23 8. During the period beginning one (1) year period preceding the filing of the PAGA
24 Claim Notice with the LWDA, Defendants violated Labor Code sections 201, 202, 203, 204, 226,
25 226.7, 227.3, 510, 1194, 1197, 1198, 1198.5, and 2802. Specifically, Defendants committed the
26 following violations of the Labor Code:

27 9. **Failure to pay wages for all hours worked at the legal minimum wage:**
28 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt

1 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
2 which includes all time that an employee is under control of the employer and all time the
3 employee is suffered and permitted to work. This includes the time an employee spends, either
4 directly or indirectly, performing services which inure to the benefit of the employer.

5 10. Labor Code sections 1194 and 1197 require an employer to compensate employees
6 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
7 Wage Orders.

8 11. In this case, Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
10 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
12 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
13 not limited to: requiring Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees to undergo a lengthy multistep process before clocking in at the start of
15 their shifts and when returning from their meal periods, including but not limited to, entering the
16 drugstore, walking to the back area and using a code to gain access to the work area, turning on
17 the lights and computer (at opening), waiting in line behind 1-2 other employees in order to clock
18 in using a landline telephone, then using the landline telephone to clock in which would take about
19 2-3 minutes and involved (1) listening to a recorded message, (2) following the prompts which
20 required the employees to enter their identification number and passcode and then (3) listening to
21 the entire remaining recording so at the end, the employees are registered as “clocked in” –
22 without paying employees for such time.

23 12. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
24 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
25 control without paying wages for that time. This resulted in Plaintiff and other current and former
26 aggrieved California-based hourly non-exempt employees working time for which they were not
27 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
28 Wage Order.

1 13. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
3 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
4 which includes all time that an employee is under control of the employer and all time the
5 employee is suffered and permitted to work. This includes the time an employee spends, either
6 directly or indirectly, performing services that inure to the benefit of the employer.

7 14. Labor Code sections 510 and 1194 require an employer to compensate employees a
8 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
9 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

10 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
11 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
12 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
13 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
14 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
15 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
16 seventh day of a workweek shall be compensated at the rate of no less than twice the
17 regular rate of pay of an employee.

18 Labor Code section 510.

19 15. In this case, Defendants failed to pay Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
21 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to
22 requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt
23 employees to undergo a lengthy multistep process before clocking in at the start of their shifts and
24 when returning from their meal periods, including but not limited to, entering the drugstore,
25 walking to the back area and using a code to gain access to the work area, turning on the lights and
26 computer (at opening), waiting in line behind 1-2 other employees in order to clock in using a
27 landline telephone, then using the landline telephone to clock in which would take about 2-3
28 minutes and involved (1) listening to a recorded message, (2) following the prompts which
required the employees to enter their identification number and passcode and then (3) listening to
the entire remaining recording so at the end, the employees are registered as “clocked in” –
without paying employees for such time.

1 16. The foregoing policies, practices, and/or procedures resulted in time during each
2 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees were under the control of Defendants but were not compensated. To the extent that the
4 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
5 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
6 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
7 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
8 sections 510 and 1194 and the applicable Wage Order.

9 17. **Failure to pay overtime at the proper overtime rate by failing to include all**
10 **remuneration in calculating the regular rate of pay for purposes of paying overtime:**
11 Defendants employed hourly non-exempt employees, including Plaintiff, with a compensation
12 structure that included additional remuneration, including, but not limited to, a non-discretionary
13 bonus called a “PSC Incentive.”

14 18. As noted above, Labor Code sections 510 and 1194 require an employer to
15 compensate employees a higher rate of pay for hours worked as follows:

16 Any work in excess of eight hours in one workday and any work in excess of 40
17 hours in any one workweek and the first eight hours worked on the seventh day of
18 work in any one workweek shall be compensated at the rate of no less than one and
19 one-half times the regular rate of pay for an employee. Any work in excess of 12
20 hours in one day shall be compensated at the rate of no less than twice the regular
 rate of pay for an employee. In addition, any work in excess of eight hours on any
 seventh day of a workweek shall be compensated at the rate of no less than twice
 the regular rate of pay of an employee.

21 Labor Code section 510.

22 19. Overtime is based upon an employee’s regular rate of pay. “The regular rate at
23 which an employee is employed shall be deemed to include all remuneration for employment paid
24 to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement
25 Policies and Interpretations Manual, Section 49.1.2.

26 20. Plaintiff and other current and former aggrieved California-based hourly non-
27 exempt employees worked overtime hours under state law during pay periods that they earned
28 additional remuneration, including, but not limited to, a non-discretionary bonus called a “PSC

1 Incentive.”

2 21. When Defendants paid overtime wages to Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees, Defendants failed to pay the overtime
4 wages at the proper overtime rate of pay due to their failure to include all remuneration when
5 calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or
6 procedure of failing to include all remuneration, including, but not limited to, a non-discretionary
7 bonus called a “PSC Incentive” when calculating Plaintiff’s and other current and former
8 aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of
9 paying overtime. For example, during the pay period from July 25, 2021 – August 7, 2021,
10 Plaintiff earned a “PSC Incentive,” however her overtime rate of pay remained at one and one-half
11 times her base rate of pay.

12 22. The foregoing policy, practice, and/or procedure resulted in Defendants failing to
13 pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
14 employees at their proper overtime rate of pay for all overtime hours worked, in violation of Labor
15 Code sections 510, 1194, 1198, and the applicable Wage Order.

16 23. **Failure to pay meal period premiums at the proper rate of pay due to**
17 **Defendants’ failure to include all remuneration when calculating the regular rate of pay for**
18 **purposes of paying meal period premiums:** Plaintiff and other current and former aggrieved
19 California-based hourly non-exempt employees regularly worked shifts of more than five (5)
20 hours in length.

21 24. California law requires an employer to authorize or permit an employee an
22 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
23 all duties and the employer relinquishes control over the employee’s activities prior to the
24 employee’s sixth hour of work. Labor Code sections 226.7, 512; Wage Order at §11; *Brinker Rest.*
25 *Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
26 employee for a work period of more than ten (10) hours per day without providing the employee
27 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
28 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period

1 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
2 period is only permitted when: (1) the nature of the work prevents an employee from being
3 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

4 25. If an employer fails to provide an employee a meal period in accordance with the
5 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
6 for each workday that a legally required and compliant meal period was not provided. Labor Code
7 section 226.7; Wage Order at §11.

8 26. As previously noted, “[t]he regular rate at which an employee is employed shall be
9 deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See
10 Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual,
11 Section 49.1.2.

12 27. In this case, on occasions when Defendants paid Plaintiff and other current and
13 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
14 missed, short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the
15 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
16 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
17 maintained a policy, practice, and/or procedure of failing to include all remuneration, including
18 but not limited to, a non-discretionary bonus called a “PSC Incentive” when calculating Plaintiff’s
19 and other current and former aggrieved California-based hourly non-exempt employees’ regular
20 rate of pay for the purpose of paying meal period premiums.

21 28. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
22 and other current and former aggrieved California-based hourly non-exempt employees not
23 receiving premium wages at the regular rate to compensate them for workdays in which
24 Defendants failed to authorize or permit them to take all legally required and compliant meal
25 periods, as required by Labor Code section 226.7 and Wage Order at §11.

26 29. **Failure to pay rest period premiums and/or pay rest period premiums at the**
27 **proper rate of pay due to Defendants’ failure to include all remuneration when calculating**
28 **the regular rate of pay for purposes of paying meal period premiums:** Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees regularly worked
2 shifts of more than three-and-a-half (3.5) hours.

3 30. California law requires every employer to authorize and permit an employee a rest
4 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
5 Code section 226.7; Wage Order at §12. Under California law, “[e]mployees are entitled to 10
6 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
7 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
8 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
9 section 226.7; Wage Order at §12. Rest periods, insofar as practicable, shall be in the middle of
10 each work period. Wage Order at §12. Additionally, the rest period requirement “obligates
11 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
12 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
13 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

14 31. If the employer fails to authorize or permit a required rest period, the employer
15 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
16 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
17 Wage Order at § 12.

18 32. As previously noted, “[t]he regular rate at which an employee is employed shall be
19 deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See
20 Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual,
21 Section 49.1.2.

22 33. In this case, Defendants failed to authorize or permit all legally required and
23 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
24 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
25 limited to: failing to authorize or permit Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt employees to take a rest period for every four (4) hours
27 worked or major fraction thereof.

28 34. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
3 workday they did not receive legally required and compliant rest periods, in violation of Labor
4 Code section 226.7.

5 35. Finally, on occasions when Defendants did pay Plaintiff and other current and
6 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
7 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
8 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
9 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
10 maintained a policy, practice, and/or procedure of failing to include all remuneration, including,
11 but not limited to, a non-discretionary bonus called a “PSC Incentive” when calculating Plaintiff’s
12 and other current and former aggrieved California-based hourly non-exempt employees’ regular
13 rate of pay for the purpose of paying rest period premiums.

14 4. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees not
16 receiving premium wages or not receiving premium wages at the regular rate to compensate them
17 for workdays in which Defendants did not authorize or permit them to take all legally required and
18 compliant rest periods, as required by Labor Code section 226.7 and Wage Order at §12.

19 36. **Failure to maintain and produce requested employment records:** An employer
20 must afford current and former employees the right to inspect or receive a copy of records
21 pertaining to their employment, upon reasonable request to the employer. Labor Code section
22 226(b). An employer who receives a request to inspect or receive a copy of records pertaining to a
23 current or former employee must comply with the request as soon as practicable, but no later than
24 twenty-one (21) calendar days from the date of the request. Labor Code section 226(c).
25 Additionally, every current and former employee, or his or her representative, has the right to
26 inspect and receive a copy of the personnel records that the employer maintains relating to the
27 employee’s performance or to any grievance concerning the employee. Labor Code section
28 1198.5(a). Upon written request from a current or former employee or his or her representative, an

1 employer must make the contents of those personnel records available for inspection or provide a
2 copy of the personnel records to the current or former employee, or his or her representative, not
3 later than thirty (30) calendar days from the date the employer receives the written request, subject
4 to some limited exceptions. Labor Code §1198.5(b)(1). Failure to comply with these requests
5 allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code sections
6 1198.5(k) and 226(f).

7 37. Labor Code section 1198.5 subsections (c)(1) further provides that with regard to
8 all employees, an employer must maintain a copy of each employee's personnel records for a
9 period of not less than three (3) years after termination of employment.

10 38. On or about October 7, 2021, Plaintiff sent a written request through her counsel to
11 Defendants for her payroll records, timecards, and personnel records pursuant to Labor Code
12 sections 226 and 1198.5. However, Defendants failed to produce all the requested employment
13 records, in violation of Labor Code section 226 and 1198.5. In response to Plaintiff's request,
14 Defendants produced some records relating to Plaintiff, but failed to include all requested records,
15 including but not limited to, Plaintiff's actual earnings statements. The earnings statements
16 Defendants produced as to Plaintiff fail to show the total hours she worked and/or the applicable
17 hourly rates in effect during the pay periods.

18 39. Plaintiff alleges that that Defendants failed to properly maintain employment
19 records and/or produce complete employment records upon request, including but not limited to, a
20 copy of the actual earnings statements of Plaintiff and, on information and belief, other current and
21 former aggrieved California-based hourly non-exempt employees, in violation of Labor Code
22 sections 226 and 1198.5.

23 40. **Failure to indemnify for expenditures or losses incurred as part of**
24 **employment:** California law requires that every employer must indemnify its employees for all
25 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
26 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
27 the ordinary business expenses and losses of the employer onto the employee. Labor Code section
28 2802.

1 41. Defendants violated Labor Code section 2802 by failing to indemnify Plaintiff and
2 other current and former California-based employees for all necessary expenditures or losses
3 incurred by them in the discharge of their duties due to Defendants' policies, practices, and/or
4 procedures including, but not limited to, the following: (1) requiring Plaintiff and other current
5 and former aggrieved California-based employees to download an application onto their personal
6 cell phones and to use it to check their emails, assignments, and daily tasks – without reimbursing
7 employees for such use; (2) requiring Plaintiff and other current and former aggrieved California-
8 based employees to accept daily calls on their personal cell phones from their supervisors and
9 coordinators about daily issues that would arise – without reimbursing employees for such use;
10 and (3) requiring Plaintiff and other current and former aggrieved California-based employees to
11 accept daily calls on their personal cell phones from Defendants at the start of their shifts asking
12 questions relating to COVID-19 – without reimbursing employees for such use.

13 42. Moreover, Defendants employed policies and procedures which ensured Plaintiff
14 and other current and former California-based employees would not receive indemnification for
15 their employment related expenses. This practice resulted in Plaintiff and aggrieved employees not
16 receiving such indemnification in compliance with California law.

17 43. Therefore, Defendants are liable to Plaintiff and other current and former
18 California-based employees for their employment-related expenditures or losses, pursuant to
19 Labor Code section 2802.

20 44. **Failure to timely pay earned wages during employment:** In California, wages
21 must be paid at least twice during each calendar month on days designated in advance by the
22 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
23 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
24 16th and the 26th day of that month and wages earned between the 16th and the last day,
25 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
26 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
27 paid within seven (7) calendar days following the close of the payroll period in which wages were
28 earned. Labor Code section 204(d).

1 45. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
2 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
3 exempt employees' earned wages (including minimum wages, overtime wages, overtime wages at
4 the proper overtime rate, meal period premium wages at the proper regular rate, rest period
5 premium wages, and rest period premium wages at the proper regular rate), in violation of Labor
6 Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in
7 their failure to pay Plaintiff and other current and former aggrieved California-based hourly non-
8 exempt employees their earned wages within the applicable time frames outlined in Labor Code
9 section 204.

10 46. **Failure to provide complete and accurate wage statements:** Labor Code section
11 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
12 employee his or her wages, the employer must "furnish each of his or her employees ... an
13 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
14 employee, except for any employee whose compensation is solely based on a salary and who is
15 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
16 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
17 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
18 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
19 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
20 name of the employee and his or her social security number, (8) the name and address of the legal
21 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee."

23 47. Defendants committed direct violations of Labor Code section 226 by failing to
24 provide Plaintiff and other current and former aggrieved California-based hourly non-exempt
25 employees an accurate itemized wage statement due to their policies, practices, and/or procedures,
26 including, but not limited to: (1) failing to show the total hours worked by the employees; and/or
27 (2) failing to show all applicable hourly rates in effect during the pay period. For example,
28 Plaintiff's paystubs did not show the total hours she worked, and Plaintiff's final paystub did not

1 show the applicable hourly rates in effect during the pay period.

2 48. Additionally, as a derivative of Plaintiff's allegations above, Defendants' failure to
3 pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
4 employees all wages earned (including minimum wages, overtime wages, overtime wages at the
5 proper overtime rate, meal period premium wages at the proper regular rate, rest period premium
6 wages, and rest period premium wages at the proper regular rate) rendered Plaintiff's and other
7 current and former aggrieved California-based hourly non-exempt employees' wage statements
8 inaccurate, in violation of Labor Code section 226.

9 49. **Failure to provide accrued and vested vacation wages:** Defendants had a policy
10 and/or procedure where Plaintiff and other aggrieved employees accrued paid vacation time and/or
11 personal time off ("PTO").

12 50. Labor Code section 227.3 states in relevant part "...whenever a contract of
13 employment or employer policy provides for paid vacations, and an employee is terminated
14 without having taken off his vested vacation time, all vested vacation shall be paid to him as
15 wages at his final rate in accordance with such contract of employment or employer policy
16 respecting eligibility or time served...." Given this, vacation/PTO wages are deferred wages that
17 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the
18 time of termination at the employees' final rate of pay.

19 51. Defendants had a vacation and/or PTO policy, including but not limited to
20 Healthcare and Personal Leave Benefits ("PLB"), in which Plaintiff and other aggrieved
21 employees accrued such paid time. Nevertheless, Defendants employed policies and procedures
22 which ensured that Plaintiff and other aggrieved employees were not properly paid accrued and
23 vested vacation time and/or PTO upon termination, in violation of Labor Code section 227.3
24 and/or California law.

25 52. **Failure to pay employees all wages due at time of termination/resignation:** An
26 employer is required to pay all unpaid wages timely after an employee's employment ends. The
27 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
28 hours of resignation (Labor Code section 202).

1 53. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
2 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
3 all their earned wages (including failure to pay minimum wages, overtime wages, overtime wages
4 at the proper overtime rate, meal period premium wages at the proper regular rate, rest period
5 premium wages, rest period premium wages at the proper rate, and vacation/PTO wages),
6 Defendants failed to pay those employees timely after each employee's termination and/or
7 resignation, in violation of Labor Code sections 201, 202, and 203.

8 54. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
9 employee, on behalf of himself or herself and other current or former employees, to bring a civil
10 action to recover civil penalties against all Defendants pursuant to the procedures specified in
11 Labor Code section 2699.3.

12 55. Plaintiff has complied with the procedures for bringing suit specified in Labor
13 Code section 2699.3. On December 20, 2021, Plaintiff filed a PAGA Claim Notice with the
14 LWDA and gave notice to Defendants by certified mail, providing notice of the specific
15 provisions of the Labor Code alleged to have been violated and including the facts and theories to
16 support the violations alleged.

17 56. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
19 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
20 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
21 Plaintiff's claims.

22 57. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
23 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3,
24 510, 1194, 1197, 1198, and 2802, beginning one (1) year period preceding the filing of the PAGA
25 Claim Notice with the LWDA, in the following amounts:

26 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 227.3,
27 1198, and 2802, one hundred dollars (\$100) for each aggrieved employee per pay period for the
28 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for

each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code sections 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

e. For violations of Labor Code section 1198.5, seven hundred fifty dollars (\$750) for each failure to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified Labor Code section 1198.5, or times agreed to by mutual agreement as provided in Labor Code section 1198.5 [penalty amounts established by Labor Code section 1198.5(k)].

58. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF ON BEHALF OF HERSELF AND ALL OTHER CURRENT AND FORMER AGGRIEVED CALIFORNIA-BASED HOURLY NON-EXEMPT EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to, those recoverable under the Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to, those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: March 23, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
LAW OFFICES OF SAHAG MAJARIAN
II

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